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9
10 Attorneys for Plaintiff MARY CALLAHAN

11
12 **UNITED STATES DISTRICT COURT**
13
14 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

15 MARY CALLAHAN, an individual;

16 Plaintiff,

17 vs.

18 NUTRIBULLET, L.L.C., a California
19 Limited Liability Company, CAPITAL
20 BRANDS, L.L.C., a California Limited
21 Liability Company, HOMELAND
22 HOUSEWARES, L.L.C., a California
23 Limited Liability Company, CALL TO
24 ACTION, L.L.C., a California Limited
25 Liability Company, NUTRILIVING,
L.L.C., and DOES 1 through 10,
inclusive,

Defendants.

Case No.:

COMPLAINT FOR DAMAGES

- 1. Negligence**
- 2. Strict Liability – Failure to Warn**
- 3. Strict Liability – Manufacturing Defect**
- 4. Strict Liability – Design Defect**
- 5. Breach of Implied Warranty of Merchantability**
- 6. Unfair Competition in Violation of Bus. & Prof. Code 17200, et seq.**

26
27
28 **DEMAND FOR JURY TRIAL**

1 Comes now Plaintiff MARY CALLAHAN and hereby alleges as follows:

2 **PARTIES**

3 1. Plaintiff MARY CALLAHAN ("Plaintiff") was and at all relevant
4 times hereto is an individual person and resident of Albany County in New York.

5 **2. Defendants**

6 a. Defendant NUTRIBULLET, L.L.C., is a California Limited
7 Liability Corporation with its principal office in Los Angeles, California.
8 Defendant NUTRIBULLET, L.L.C., is in the business of and did design, develop,
9 formulate, manufacture, test, package, promote, label, advertise, market, instruct
10 on, warn about, distribute, supply and/or sell products and blenders marketed under
11 the NutriBullet and MagicBullet brand names, and other substantially similar
12 Bullet products, amongst other brands. These products are intended for use as
13 household blenders.

14 b. Defendant CAPITAL BRANDS, L.L.C., is a California Limited
15 Liability Company, with its principal office in Los Angeles, California. Defendant
16 CAPITAL BRANDS, L.L.C., is in the business of and did design, develop,
17 formulate, manufacture, test, package, promote, label, advertise, market, instruct
18 on, warn about, distribute, supply and/or sell products and blenders marketed under
19 the NutriBullet and MagicBullet brand names, amongst other brands. These
20 products are intended for use as household blenders.

21 c. Defendant HOMELAND HOUSEWARES, L.L.C., is a
22 California Limited Liability Company, with its principal office in Los Angeles,
23 California. Defendant HOMELAND HOUSEWARES, L.L.C., is in the business of
24 and did design, develop, formulate, manufacture, test, package, promote, label,
25 advertise, market, instruct on, warn about, distribute, supply and/or sell products
26 and blenders marketed under the NutriBullet and MagicBullet brand names,
27 amongst other brands. These products are intended for use as household blenders.

1 d. Defendant CALL TO ACTION, L.L.C., is a California Limited
2 Liability Company, with its principal office in Los Angeles, California. CALL TO
3 ACTION, L.L.C., is in the business of and did design, develop, formulate,
4 manufacture, test, package, promote, label, advertise, market, instruct on, warn
5 about, distribute, supply and/or sell products and blenders marketed under the
6 NutriBullet and MagicBullet brand names, amongst other brands. These products
7 are intended for use as household blenders.

8 e. Defendant NUTRILIVING, L.L.C., is a California Limited
9 Liability Company, with its principal office in Los Angeles, California. Defendant
10 NUTRILIVING, L.L.C., is in the business of and did design, develop, formulate,
11 manufacture, test, package, promote, label, advertise, market, instruct on, warn
12 about, distribute, supply and/or sell products and blenders marketed under the
13 NutriBullet and MagicBullet brand names, amongst other brands. These products
14 are intended for use as household blenders.

15 f. Collectively, NUTRIBULLET, L.L.C., a California Limited
16 Liability Company, CAPITAL BRANDS, L.L.C., a California Limited Liability
17 Company, HOMELAND HOUSEWARES, L.L.C., a California Limited Liability
18 Company, CALL TO ACTION, L.L.C., a California Limited Liability Company,
19 NUTRILIVING, L.L.C., a California Limited Liability Company shall be referred
20 to as “Defendants” or “All Defendants” herein.

21 3. The true names, identities and capacities of those defendants
22 designated as DOES 1 through 10, inclusive, and each of them, are unknown to
23 Plaintiff, who sues said defendants by such fictitiously designated names. Plaintiff
24 is informed and believes and, on the basis thereof, allege that each of the
25 Defendants designated herein as a DOE was a California resident and in some way
26 was legally responsible for the events herein alleged. Plaintiff will seek leave of
27 Court to set forth the true names, identities and capacities of defendants designated
28 as DOES 1 through 10, inclusive, when same has been ascertained. References to

1 "Defendants" or "All Defendants" herein include the Defendants listed in
2 Paragraph 2, above, in addition to DOES 1 through 10, inclusive.

3 4. Plaintiff is informed and believes and on the basis thereof alleges
4 Defendants and DOES 1 through 10, inclusive, and each of them, were responsible
5 for the design, manufacturing, development, research, testing, inspection,
6 packaging, mass-production, advertisement, promotion, supply, distribution, sale,
7 delivery, instructions on, warnings about, and labeling of NutriBullet blenders,
8 including the blender which injured Plaintiff as described herein.

JURISDICTION AND VENUE

10 5. This Court has jurisdiction over this controversy pursuant to 28
11 U.S.C. Section 1332(a)(2) because the Parties are completely diverse and the
12 amount in controversy exceeds the \$75,000.00 minimum jurisdictional
13 requirement, exclusive of costs and attorney's fees.

14 6. Venue is appropriate in this District pursuant to 28 U.S.C. Section
15 1391(b)(1), as all Defendants named herein are residents of the State of California,
16 in which this district is located. Venue is appropriate in this County because each
17 and every one of the Defendants is a limited liability company, originating and
18 operating out of the County of Los Angeles, State of California. Every manager,
19 member and agent for each and every one of the Defendants operates from their
20 principal place of business at 11755 Wilshire Boulevard, Suite 1200, Los Angeles,
21 California 90025. Venue is also proper because Defendants' primary place of
22 business is the site of many of the unlawful acts which caused Plaintiff's harm took
23 place, specifically the designing, developing, formulating, manufacturing, testing,
24 packaging, promoting, labeling, advertising, marketing, instructing on, warning
25 about, distributing, supplying and/or selling products and blenders marketed under
26 the NutriBullet and MagicBullet brand names, amongst other brands.

GENERAL ALLEGATIONS

7. This action arises from Plaintiff MARY CALLAHAN'S use of Defendants' defective product, the Nutribullet 900 blender, which resulted in serious injuries to Plaintiff's body.

8. Plaintiff purchased the Nutribullet blender on or around September 18, 2017. Plaintiff purchased the NutriBullet blender for the purpose of preparing healthier meals and food, after observing Defendants' advertising and marketing efforts. Defendants regularly tout the health benefits of using a NutriBullet blender on the NUTRiLiving website (<http://www.nutriliving.com>).

9. On December 1, 2017, Plaintiff was using the NutriBullet to prepare a smoothie consisting of one half (1/2) of a banana, two (2) to three (3) tablespoons vanilla yogurt, two (2) teaspoons crunchy organic peanut butter, one (1) teaspoon Hershey chocolate syrup, and a quarter (1/4) cup of 1% milk. The banana was in the freezer for 90 minutes prior to blending, all other ingredients were refrigerated.

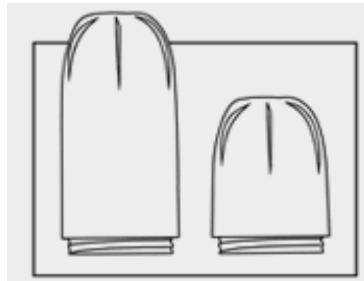
10. All NutriBullet blenders, including the one used by Plaintiff, have three components: a powered base unit which contains a high-speed motor (“base”) (Figure 1), a plastic cup-shaped container that holds ingredients to be blended (“canister”) (figure 2), and a plastic lid mounted with metal blades (“blade assembly”) (Figure 3), which screws into the cup and is energized by the base. This design is used across all models of Nutribullet blenders, including the Magic Bullet, Nutribullet 600, Nutribullet 900, Nutribullet Rx, and other blenders in the Nutribullet line. Courts have repeatedly stated blenders across the Nutribullet product line are substantially similar, including the court’s written decision in *Littlefield v. Nutribullet, et al.*, 2:16-cv-06894-DDP (SSx) (Dkt. No. 165), which specifically ruled the Magic Bullet, Nutribullet 600, Nutribullet 900, NutriBullet Sport, and NutriBullet University Pro are all substantially similar. The alleged defects set forth herein are a result of, *inter alia*, the closed canister design, which

1 is substantially similar across the entire Nutribullet product line, including the
2 subsequently designed and released Nutribullet Prime and Rx. The alleged defects
3 are also a result of defective plastic materials in the canister which are the same or
4 substantially similar across the entire Nutribullet blender product line.

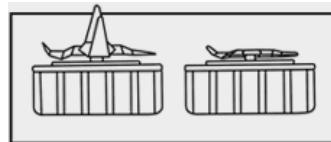
5 *Figure 1*



6 *Figure 2*



7 *Figure 3*



8
9 a. On or around March 23, 2004, a design patent (no. D487,668)
10 was issued for a “blender and canister set.” Leonard “Lenny” Sands was named as
11 the inventor, and the patent was assigned to Lohan Media LLC.

12
13 b. On or around January 26, 2004, a Design Patent Assignment
14 was executed which transferred Lohan Media, LLC’s interest in patent no.
15 D487,668 (then identified under Design Patent Application No. 29/185,182) to
16 Homeland Housewares, LLC.

17
18 c. Between January 11, 2005 and February 17, 2009, several
19 design patents (nos. D500,633; D501,759; D517,862; D519,321; D521,802;
20 D532,255; D544,427; and D586,620) were issued for items described as “mugs,”
21 “blender base and containers,” and “mug with ring.” Leonard “Lenny” Sands was
22 named as the inventor, and the patents were assigned to Homeland Housewares,
23 LLC¹.

24
25 d. On or around June 19, 2012, Homeland Housewares, LLC
26 registered a trademark for the trademark “Nutri Bullet” (serial no. 852,15434).

27
28 ¹ See <https://www.nutribullet.com/patents.html> (as of April 9, 2018).

e. Homeland Housewares, LLC and Defendant Nutribullet, LLC are wholly owned subsidiaries of Capital Brands, LLC, a California limited liability company. Capital Brands, LLC is a privately-owned company and not publicly traded or listed. At all relevant times, Defendant Nutribullet, LLC worked in concert with Homeland Housewares, LLC and Capital Brands, LLC with one another and/or as each other's agents in connection with NutriBullet blenders.

11. After the blade assembly is screwed onto the cup, the cup and the blade assembly is then inverted and pressed down into the power base, which initiates the movement of the blades affixed to the lid. If the cup and blade assembly is twisted while on the power base, plastic tabs on the assembly will lock it in place on the power base, creating an open electrical circuit to allow the high-speed motor to operate the blades. Twisting of the assembly in the opposite direction should bring the motor to a stop, release the assembly and disengage the motor.

12. Each NutriBullet blender, including the NutriBullet 900 blender, comes with a User Guide and Recipe Book, which encourage use of various ingredients, and contains recipes and instructions for making hot recipes, including soups, with the blender.

13. On December 1, 2017, Plaintiff was using the NutriBullet to prepare a smoothie consisting of one half (1/2) a banana, 2 to 3 tablespoons vanilla yogurt, 2 teaspoons crunchy organic peanut butter, 1 teaspoon Hershey chocolate syrup, and 1/4 cup of 1% milk. Plaintiff blended the ingredients for approximately 40 seconds. Plaintiff began to disengage the canister from the base. As Plaintiff began to depress and twist the canister, the canister exploded and broke into two pieces causing the Plaintiff's right hand to go into the still-spinning blades where it mangled her hand and caused severe lacerations. Plaintiff's index finger was nearly severed, and the powerful forces of the spinning blades impacting her

1 fingers smashed and chopped her finger bones, resulting in multiple breaks.
2 Plaintiff suffered, and will continue to suffer from, severe and permanent injuries.

3 14. When the incident happened, Plaintiff called the paramedics, who
4 transported her to Albany Medical Center for emergency treatment. Plaintiff was
5 prescribed pain medication and had x-rays taken of her right hand. Plaintiff also
6 had the lacerations sutured, and her hand was dressed and splinted. Plaintiff was
7 diagnosed with multiple fractures in her right hand and was referred to follow up
8 with other medical professionals for wound care, orthopedic hand surgery, and
9 extensive physical therapy.

10 15. Among additional serious injuries, the Nutribullet nearly severed
11 Plaintiff's right index finger, breaking bones in her finger in the process, and
12 causing significant functional limitations to the distal joint and severe nerve
13 damage. Plaintiff's right index finger is permanently disfigured as a result. The
14 powerful forces of the blades smashing into Plaintiff's right little finger caused an
15 open would fracture, with the severe breaks in the joint leading to an enlargening
16 of the joint and arthritic changes. The lacerations and the fractured smashed and
17 chopped bones have caused Plaintiff a great deal of pain and suffering, and
18 residual permanent disfigurement of her right hand. The lacerations and the
19 fractured bones have caused Plaintiff great difficulty typing and using a computer
20 mouse. These functional limitations created serious impediments to Plaintiff being
21 able to perform her required job duties as an attorney for a New York state agency.
22 Because of these functional limitations, Plaintiff took a costly early retirement at
23 age 61 rather than at age 65 as she had planned.

24 16. Defendants have been aware of the dangers and risk of injuries to its
25 users caused by NutriBullet blenders since at least 2011, but no later than at least
26 August 2014, specifically, that the blade assembly can forcefully separate from the
27 canister, and that the canister can explode, both when it is affixed to the base and
28 when it is not affixed to the base. Plaintiff was never informed by Defendants of

1 the risk of severe bodily injury associated with using a NutriBullet blender. These
2 dangers are caused by and are a result of, among other factors, the defective closed
3 canister design and defective materials used in the canisters. The canister design
4 and materials defects are the same or substantially similar across the entire
5 Nutribullet blender product line.

6 a. The Nutribullet blenders are all based on the same design and
7 the various models are substantially similar to one another, and have, in some
8 form, been available in the marketplace since 2004. The substantially similar
9 Nutribullet blender models include, but are not limited to: the MagicBullet,
10 MagicBullet Mini, Nutribullet Original (600/ NB-101), NutriBullet Pro 900, the
11 NutriBullet Prime, NutriBullet Sport, Nutribullet Rx, Nutribullet University Pro,
12 Baby Bullet, Veggie Bullet, Party Bullet, NutriBullet Select, NutriBullert Lean,
13 NutriBullet Max, NutriBullet Balance, NutriBullet 1000 and NutriBullet 1200
14 (collectively “the NutriBullet blenders”).

15 b. The NutriBullet blenders all have a closed canister, similar
16 blade configuration, and similar power base to the blender which is at issue in this
17 litigation. All of the NutriBullet blenders use a closed canister and have a
18 blender/extractor-style blade like that of the NutriBullet blender at issue and
19 relating to the alleged product defect herein. Accordingly, all Nutribullet blenders
20 have a substantially similar design, which is a substantial factor in the injuries
21 caused by the Nutribullet products.

22 c. The process and mechanism of failure is substantially similar
23 across all product failures of which Plaintiff is aware. With respect to the product
24 defects, processes, and mechanisms of failure, the entire Nutribullet product line is
25 substantially similar in all factors relevant to the product failures. To wit:

- 26 • The entire Nutribullet blender product line includes a
27 defective closed-canister design;

- 1 • The canisters for the entire Nutribullet blender product
2 line are designed and manufactured with the same or
3 substantially similar plastic products which degrade and
4 deform over time, and which are not safe for their
5 intended use;
- 6 • The entire Nutribullet blender product line contains
7 motors which create heat that is transferred into the
8 canister and contents of the canister, sometimes heating
9 the contents of the canister to dangerous temperatures;
- 10 • The entire Nutribullet blender product line utilizes
11 rapidly spinning blades, which rotate at tens of thousands
12 of rotations per minute, which create friction during use
13 which creates heat that is also transferred to the contents
14 of the canister, sometimes heating the contents to
15 dangerous temperatures;
- 16 • The closed canister design across the entire Nutribullet
17 product line is sealed and does not contain any pressure
18 relief mechanism;
- 19 • Increases in temperature in the closed canister, which is
20 included and is the same or substantially similar across
21 the entire Nutribullet blender product line, result in an
22 increase in pressure within the canister. In many
23 instances the increase in pressure results in the forceful
24 and unintended separation of the canister from the blade
25 assembly, which can lead to various injuries, primarily
26 burns and lacerations, or as in this instance, the increase
27 in pressure and the unsafe materials caused the canister to

explosively break during use exposing Plaintiff to the dangerous still-spinning blades;

- Across the entire Nutribullet blender product line, the risk of these dangerous heat and pressure induced product failures increases with product age;
 - Across the entire Nutribullet blender product line, the risk of these dangerous heat and pressure induced product failures increases with the duration of time a user runs or activates the blender;
 - The use of very cold ingredients in the sealed closed canisters also creates a risk of danger to users as the drop in temperature in the sealed closed canister causes a drop in pressure which strains and deforms the canister and causes the canister and blade assembly to disconnect.

d. The design, testing, analysis and complaints regarding defects and injuries arising therefrom of the Nutribullet blender that is the subject of this litigation is substantially similar to the NutriBullet blenders that have been on the marketplace for almost fifteen (15) years.

17. Defendants became aware of the risk of injuries associated with their very similar product existing under the same set of patents as Plaintiff's blender, the Magic Bullet blender. In a report published on SaferProducts.gov in 2011, a Magic Bullet consumer described injuries she suffered when she was blending hot sweet potatoes with her Magic Bullet blender. The consumer report stated that when the user began to unscrew the lid of the Magic Bullet blender, the contents exploded in a six-foot radius around her kitchen, causing burns and other injuries. As set forth in the report, this Magic Bullet blender consumer personally contacted Defendant Homeland Housewares, LLC, and the parent company for Defendant NutriBullet, LLC, on October 20, 2011. The report was sent by Defendant

1 Homeland Housewares, LLC, to the Consumer Product Safety Commission in
2 October 2011. Accordingly, Defendants fraudulently concealed and intentionally
3 failed to disclose to Plaintiff the defective nature of the NutriBullet blenders,
4 including the Nutribullet blender model at issue herein, in violation of common
5 law. Additionally, other similar prior incidents were either widely-covered in the
6 media or published on Saferproducts.gov:

7 a. On January 31, 2014, a Nutribullet user in Palmdale, California,
8 filed a lawsuit against Defendant alleging that she suffered severe burns when her
9 Nutribullet blender unexpectedly exploded on October 21, 2013. Defendant
10 Nutribullet responded to the lawsuit and participated in the litigation, putting
11 Defendants on notice of the risk of injuries of this type and mechanism caused by
12 its products.

13 b. In a report published on SaferProducts.gov in January 2015, a
14 45-year-old woman describes that in August 2014, she suffered second- or third-
15 degree burns on her face, forehead and neck when her NutriBullet exploded while
16 blending.

17 c. In July 2015, a woman in England suffered burn injuries to her
18 face after her NutriBullet blender malfunctioned. This incident was widely
19 covered by the media, and a NutriBullet representative made a public statement
20 regarding this incident, indicating that NutriBullet had knowledge of this incident.

21 d. In a report published on SaferProducts.gov in January 2016, a
22 NutriBullet user described how they were unable to unscrew the canister of their
23 machine from the blade assembly due to pressure. Later that evening, the canister
24 exploded. Fortunately, the user suffered no injuries.

25 e. There are numerous reviews on Amazon.com for NutriBullet
26 blenders wherein the reviewer describes how the canister exploded during normal
27 use, often spraying hot food product onto the user. These reviews and the
28 incidents of explosion pre-date the explosion that is the subject of this lawsuit.

1 f. As early as May 2014, if not earlier, Defendants received
2 complaints of dangerous explosions involving product defects, specifically over-
3 pressurization of Nutribullet canisters from foreseeable uses, from customers.
4 Defendant documented these complaints within their internal databases, which
5 have become available to Plaintiff through litigation. Plaintiff is informed and
6 believes, and thereon alleges, that Defendants are in possession of records of
7 thousands of instances of prior complaints about malfunctions in the Nutribullet
8 model blender used by Plaintiff, and in substantially similar models of blenders.
9 Plaintiff is informed and believes these records of prior complaints are maintained
10 in an internal database accessible by Defendants. Plaintiff is informed and believes
11 that these records of thousands of prior complaints regarding the subject model
12 blender and substantially similar Nutribullet blenders will definitely establish prior
13 knowledge by Defendants that the subject model blender and substantially similar
14 Nutribullet blenders posed a serious risk of causing catastrophic injuries to users
15 during reasonably foreseeable use, and that despite this knowledge, Defendants
16 acted despicably and maliciously by continuing to sell dangerous and defective
17 blenders to consumers who could be hurt by these dangerous Nutribullet blenders.
18 Protective orders prevent Plaintiff from attaching or further describing said
19 incidents herein, but Plaintiff can produce records of prior incidents with a court
20 order or make records of incidents available for *in camera* review at the Court's
21 request.

22 g. Abir Cohen Treyzon Salo, LLP, Plaintiff's counsel represents
23 other clients with claims against NutriBullet, who have or will file lawsuits against
24 NutriBullet for injuries they suffered when their NutriBullet blender(s) exploded.
25 ACTS currently represents over 100 people injured by dangerous and defective
26 Nutribullet blenders. These incidents, involving the subject model blender or
27 substantially similar Nutribullet blenders, include, but are not limited to:

- i. On May 1, 2015, a NutriBullet Pro 900 Series user suffered burns after their machine exploded.

ii. On December 24, 2015, a NutriBullet Pro 900 Series user suffered burns after their machine exploded.

iii. On January 2016, a NutriBullet Pro 900 Series user suffered burns after their machine exploded.

iv. On January 21, 2016, a NutriBullet Pro 900 Series user suffered lacerations after their machine exploded.

v. On March 9, 2016, a NutriBullet Pro 900 Series user suffered burns after their machine exploded.

vi. On April 4, 2016, a NutriBullet 600 user suffered burns after their machine exploded.

vii. On April 15, 2016, a NutriBullet user suffered burns after their machine exploded.

viii. On June 14, 2016, a NutriBullet 600 user suffered lacerations after their machine exploded.

ix. On July 11, 2016, a NutriBullet 600 user suffered lacerations after their machine exploded.

x. In August 2016, a NutriBullet 600 user suffered burns after their machine exploded.

xi. On August 1, 2016, a NutriBullet Pro 900 Series user suffered lacerations after their machine exploded.

xii. On September 10, 2016, a NutriBullet Pro 900 Series user suffered burns after their machine exploded.

xiii. On September 14, 2016, a NutriBullet Pro 900 Series user suffered burns after their machine exploded.

1 xiv. On December 31, 2016, a NutriBullet Rx user suffered
2 burns after their machine exploded.

3 xv. On January 1, 2017, a NutriBullet user suffered
4 lacerations after their machine exploded.

5 xvi. On January 23, 2017, a NutriBullet Rx user suffered
6 lacerations after their machine exploded.

7 xvii. On January 28, 2017, a NutriBullet 600 user suffered
8 burns after their machine exploded.

9 xviii. On March 1, 2017, a NutriBullet user suffered burns after
10 their machine exploded.

11 xix. On March 21, 2017, a NutriBullet 600 user suffered
12 burns after their machine exploded.

13 xx. On April 10, 2017, a NutriBullet Pro 900 Series user
14 suffered burns after their machine exploded.

15 xxi. On April 20, 2017, a NutriBullet Rx user suffered burns
16 after their machine exploded.

17 xxii. On April 28, 2017, a NutriBullet 600 user suffered burns
18 after their machine exploded.

19 xxiii. On May 1, 2017, a NutriBullet Pro 900 Series user
20 suffered burns after their machine exploded.

21 xxiv. On May 1, 2017, a NutriBullet Pro 900 Series user
22 suffered burns after their machine exploded.

23 xxv. On May 1, 2017, a NutriBullet 600 user suffered
24 lacerations after their machine exploded.

25 xxvi. On May 3, 2017, a NutriBullet user suffered burns after
26 their machine exploded.

27 xxvii. On May 7, 2017, a NutriBullet user suffered lacerations
28 after their machine exploded.

1 xxviii. On May 27, 2017, a NutriBullet Pro 900 Series user
2 suffered burns after their machine exploded.

3 xxix. On May 30, 2017, a NutriBullet 600 user suffered burns
4 after their machine exploded.

5 xxx. On June 1, 2017, a NutriBullet user suffered burns after
6 their machine exploded.

7 xxxi. On June 1, 2017, a NutriBullet Pro 900 Series user
8 suffered burns after their machine exploded.

9 xxxii. On June 5, 2017, a NutriBullet Pro 900 Series user
10 suffered burns after their machine exploded.

11 xxxiii. On June 7, 2017, a NutriBullet Pro 900 Series user
12 suffered burns after their machine exploded.

13 xxxiv. On June 19, 2017, a NutriBullet Prime user suffered
14 burns after their machine exploded.

15 xxxv. On June 27, 2017, a NutriBullet 600 user suffered
16 lacerations after their machine exploded.

17 xxxvi. On June 28, 2017, a NutriBullet user suffered laceration
18 and fractured thumb after their machine exploded.

19 xxxvii. On June 30, 2017, a NutriBullet Prime user suffered
20 burns after their machine exploded.

21 xxxviii. On July 5, 2017, a NutriBullet Rx user suffered burns
22 after their machine exploded.

23 xxxix. On July 10, 2017, a NutriBullet 600 user suffered burns
24 after their machine exploded.

25 xli. On July 14, 2017, a NutriBullet user suffered burns after their
26 machine exploded.

27 xli. On July 19, 2017, a NutriBullet Pro 900 Series user suffered
28 burns after their machine exploded.

1 xlii. On August 1, 2017, a NutriBullet Pro 900 Series user
2 suffered burns after their machine exploded.

3 xliii. On August 16, 2017, a NutriBullet Pro 900 Series user
4 suffered burns and laceration after their machine exploded.

5 xliv. On August 16, 2017, a NutriBullet 600 user suffered burns
6 after their machine exploded.

7 xlv. On August 25, 2017, a NutriBullet Pro 900 Series user
8 suffered burns after their machine exploded.

9 xlvi. On September 11, 2017, a NutriBullet Pro 900 Series user
10 suffered lacerations after their machine exploded.

11 xlvii. On September 12, 2017, a NutriBullet 600 user suffered
12 lacerations and lost three teeth after their machine exploded.

13 xlviii. On September 20, 2017, a NutriBullet 600 user suffered
14 lacerations after their machine exploded.

15 xlix. On September 22, 2017, a NutriBullet Pro 900 Series
16 user suffered lacerations and broken finger after their machine exploded.

17 i. On October 7, 2017, a NutriBullet Pro 900 Series user
18 suffered burns after their machine exploded.

19 ii. On October 7, 2017 a NutriBullet 600 user suffered burns
20 after their machine exploded.

21 iii. On October 28, 2017, a NutriBullet user suffered burns
22 after their machine exploded.

23 iv. On October 30, 2017, a NutriBullet user suffered burns
24 after their machine exploded.

25 v. On November 4, 2017, a NutriBullet 600 user suffered
26 burns after their machine exploded.

27 vi. On November 4, 2017, a NutriBullet 600 user suffered
28 burns after their machine exploded.

1 lvi. On November 5, 2017, a NutriBullet user suffered
2 lacerations after their machine exploded.

3 lvii. On November 6, 2017, a NutriBullet 600 user suffered
4 burns after their machine exploded.

5 lviii. On November 8, 2017, a NutriBullet 600 user suffered
6 burns after their machine exploded.

7 lix. On November 15, 2017, a NutriBullet Rx user suffered
8 burns after their machine exploded.

9 lx. On November 17, 2017, a NutriBullet 600 user suffered
10 lacerations after their machine exploded.

11 lxi. On November 19, 2017, a NutriBullet Pro 900 Series user
12 suffered burns after their machine exploded.

13 lxii. On November 25, 2017, a NutriBullet 600 user suffered burns
14 after their machine exploded.

15 lxiii. On November 30, 2017, a NutriBullet user suffered burns
16 after their machine exploded.

17 18. Notwithstanding their knowledge of the immediate and severe danger
18 posed by their products to consumers, Defendants failed to do anything about the
19 defective nature of the blender as to prevent the type of injuries they knew it
20 caused for years prior to Plaintiff suffering injuries. Possible actions that could
21 have been taken by Defendants include, but are not limited to:

- 22 a. Issuing warnings;
23 b. Changing the defective design; or,
24 c. Recalling of the NutriBullet blenders.

25 19. By not undertaking any of these tasks, Defendants consciously and
26 knowingly disregarded the safety of its users, including Plaintiff, yet continued to
27 collect profits from the sale of over 40 million units worldwide. The consumer
28 complaints regarding malfunctions of Defendants' NutriBullet blenders, put

1 Defendants on notice of the defects in its products, but Defendants elected to
2 continue sale of its products to the detriment of its customers, putting them at risk
3 of significant and foreseeable injuries. Defendants were undisputedly aware that
4 their NutriBullet blenders presented exactly the same type of risk which injured
5 Plaintiff, prior to Plaintiff suffering injuries, and therefore, Defendants fraudulently
6 concealed and intentionally failed to disclose to Plaintiff the defective nature of the
7 NutriBullet blenders, in violation of common law. Defendants were aware, or
8 should have been aware, the defective canister design and materials were
9 substantial factors in creating the dangers presented by their products. Given the
10 amount of complaints Defendants received prior to Plaintiff's injury, Defendants
11 knowingly and willfully disregarded Plaintiff's safety because they were aware of
12 the probable dangerous consequences of their conduct (the concealment of the
13 dangers of using the NutriBullet blenders), and they willfully failed to avoid those
14 consequences (by continuing to sell NutriBullet blenders) without taking any
15 corrective actions. As discussed *supra*, despite knowledge of these complaints
16 from its customers, Defendant covered up reports of these injuries, potentially
17 criminally by failing to inform the United States Consumer Product Safety
18 Commission, but despicably kept their consumers and future customers in the dark
19 as they continued to put profits ahead of consumer safety and to date, continues to
20 do so. Accordingly, years before Plaintiff was injured by the NutriBullet blender,
21 Defendants were aware that this type of product presented a risk of injury to its
22 consumers, which Plaintiff ultimately suffered, including information that its
23 NutriBullet blenders can and will explode or cause its contents to erupt under
24 certain circumstances.

25 20. Accordingly, for several years prior to the incident in which Plaintiff
26 was injured by the NutriBullet blender, Defendants were aware that their product
27 presented a risk of injury to its consumers, which Plaintiff ultimately suffered,
28 including information that its blenders can and will unexpectedly explode during

1 reasonably foreseeable use, and Defendants elected not to warn its customers or
2 change its products to prevent consumers from suffering injuries, regardless of the
3 difference between NutriBullet blender models.

4 **FIRST CLAIM FOR RELIEF**

5 **Negligence**

6 **(Plaintiff MARY CALLAHAN as to ALL DEFENDANTS and DOES 1 – 10)**

7 21. Plaintiff incorporates by reference all other paragraphs of this
8 complaint as if fully set forth herein.

9 22. At all times relevant times to this action, Defendants and DOES 1 –
10, inclusive, had a duty to exercise reasonable care, and to comply with the
11 existing standards of care, in the preparation, design, development, formulation,
12 manufacture, testing, packaging, promotion, labeling, advertising, marketing,
13 instruction on use, warnings, distribution, supply and/or sale of products and
14 blenders marketed under the NutriBullet and MagicBullet brand names, which
15 Defendants introduced into the stream of commerce to be used as household
16 blenders. This included a duty to ensure that users would not suffer from
17 unreasonable dangerous accidents while using the machine.

18 23. At all times relevant to this action, Defendants had a duty to ensure
19 their products did not pose a significant risk of bodily harm and adverse events.

20 24. At all relevant times, Defendants, knew or reasonably should have
21 known that their products were unreasonably dangerous and defective when
22 utilized for the products' intended use and purpose, including but not limited to the
23 following: a) The blade assembly may operate even when the canister is not locked
24 into the base or after the canister has exploded, broken apart, separated from or
25 shot off the base, creating the potential to severely injure consumers, including
26 lacerations and broken bones; b) that the reasonably foreseeable operation of the
27 device will cause the canister to over-pressurize and its contents to heat up and
28 pose a danger to anyone around if the ultra-heated contents erupt from the canister

1 as a result of a failure of the machine and, c) that the warnings and labels on its
2 blenders and its user manual, if any at all, are inadequate to alert the consumer of
3 the dangers in using said machine.

4 25. At all relevant times, Defendants knew or reasonably should have
5 known that its products were unreasonably dangerous and defective when used for
6 its intended purpose, and that Plaintiff, being among foreseeable users who could
7 be exposed to harm, would foreseeably suffer injury as a result of Defendants'
8 failure to exercise reasonable care.

9 26. Defendants failed to modify or otherwise retrofit its products,
10 including to make it safe for use, and otherwise failed to warn consumers of the
11 dangers which Defendants knew or should have known existed to such consumers
12 or anyone who would use the machine in question, and continues to do so to this
13 day.

14 27. The likelihood and gravity of the harm presented by the NutriBullet
15 blender outweigh the utility of the design of the product.

16 28. The product defects alleged above were substantial factors
17 contributing to the cause of injuries and damages suffered by Plaintiff.

18 29. As a direct and proximate cause of the negligence of Defendants,
19 Plaintiff suffered, and will continue to suffer, personal injuries, including but not
20 limited to, medical bills, loss of past and future earnings, pain, disfigurement,
21 scarring, loss of mobility, use and feeling in her hand, severe emotional distress
22 and anxiety, significant functional loss and limitations, general damages and other
23 economic and non-economic damages in an amount to be proven at trial.

24 **SECOND CLAIM FOR RELIEF**

25 **Strict Products Liability – Failure to Warn**

26 **(Plaintiff MARY CALLAHAN as to ALL DEFENDANTS and DOES 1-10)**

27 30. Plaintiff incorporates by reference all other paragraphs of this
28 complaint as if fully set forth herein.

1 31. At all relevant times, Defendants and Does 1-10 were in the business
2 of and did design, develop, formulate, manufacture, test, package, promote, label,
3 advertise, market, instruct on, distribute, supply and/or sell products and blenders
4 marketed under the NutriBullet and MagicBullet brand names. These products are
5 intended for use as household blenders.

6 32. Defendants placed the NutriBullet blenders, including the blender
7 used by Plaintiff, into the stream of commerce.

8 33. The NutriBullet blenders were defective at the time they were placed
9 into the stream of commerce by Defendants in that: 1) the blenders, including the
10 blender at issue in the litigation, had inadequate warnings or instructions; 2)
11 Defendants knew about but failed to inform consumers of the risks presented,
12 thereby preventing consumer, including Plaintiff, from eliminating or reducing the
13 risk; 3) the NutriBullet blenders failed to provide adequate safe-use instructions;
14 and 4) Defendants knew or should have known that the NutriBullet blenders were
15 unreasonably dangerous in that it created a substantially increased risk of serious
16 bodily harm to reasonably foreseeable consumers, including Plaintiff, and
17 Defendants failed to adequately warn of such increased risk.

18 34. The NutriBullet blenders, including the blender at issue herein, were
19 also defective because of inadequate post-marketing warnings or instructions
20 because Defendants failed to provide adequate warnings to consumers after
21 Defendants knew or should have known of the risk of serious bodily harm from the
22 intended or foreseeable use of the products.

23 35. As a direct and proximate cause of the negligence of Defendants,
24 Plaintiff suffered, and will continue to suffer, personal injuries, including but not
25 limited to, medical bills, loss of past and future earnings, pain, disfigurement,
26 scarring, loss of mobility, use and feeling in her hand, severe emotional distress
27 and anxiety, significant functional loss and limitations, general damages and other
28 economic and non-economic damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF

Strict Liability – Manufacturing Defect

(Plaintiff MARY CALLAHAN as to ALL DEFENDANTS and DOES 1-10)

36. Plaintiff incorporates by reference all other paragraphs of this complaint as if fully set forth herein.

37. At all relevant times, Defendants and Does 1-10 were in the business of and did design, develop, formulate, manufacture, test, package, promote, label, advertise, market, instruction, distribute, supply and/or sell products and blenders marketed under the NutriBullet and MagicBullet brand names. These products are intended for use as household blenders.

38. Defendants placed the NutriBullet blenders, including the blender used by Plaintiff, into the stream of commerce.

39. The NutriBullet blenders, including the blender at issue herein, contained a manufacturing defect at the time it left Defendants' possession. Specifically, the NutriBullet blender used by Plaintiff had a manufacturing defect in that it causes an explosion in the form of over-pressurization of the canister leading to separations between the canister and blade assembly in normal use without warning to the user. This defect caused Plaintiff's severe injuries.

40. Plaintiff was harmed by the NutriBullet blender when as the Plaintiff began to disengage the canister from the base, the canister broke into two pieces causing the Plaintiff's right hand to go into the powered and still-spinning blades where it mangled her hand, nearly severing part of her index finger, and causing severe lacerations and broken bones. Plaintiff's injuries are severe and permanent.

41. The manufacturing defects in the NutriBullet blenders were the direct and proximate cause(s) of Plaintiff's injuries described herein.

42. As a direct and proximate cause of the negligence of Defendants, Plaintiff suffered, and will continue to suffer, personal injuries, including but not limited to, medical bills, loss of past and future earnings, pain, disfigurement,

1 scarring, loss of mobility, use and feeling in her hand, significant functional loss
2 and limitations, severe emotional distress and anxiety, general damages and other
3 economic and non-economic damages in an amount to be proven at trial.

4 **FOURTH CLAIM FOR RELIEF**

5 **Strict Liability – Design Defect**

6 **(Plaintiff MARY CALLAHAN as to ALL DEFENDANTS and DOES 1-10)**

7 43. Plaintiff incorporates by reference all other paragraphs of this
8 complaint as if fully set forth herein.

9 44. At all relevant times, Defendants and Does 1-10 were in the business
10 of and did design, develop, formulate, manufacture, test, package, promote, label,
11 advertise, market, instruct on, warn about, distribute, supply and/or sell products
12 and blenders marketed under the NutriBullet and MagicBullet brand names. These
13 products are intended for use as household blenders.

14 45. Defendants placed the NutriBullet blenders, including the blender
15 used by Plaintiff, into the stream of commerce.

16 46. The NutriBullet blenders and the component parts contained a design
17 defect when the blenders left Defendants' possession because the blenders,
18 including the blender at issue herein, would not operate safely as an ordinary
19 consumer would have expected at the time of use, in that: 1) the normal operation
20 of the blender creates friction and heat which creates pressure, and then causes the
21 closed canister to over-pressurize; 2) the over-pressurized canister separates from
22 the blade assembly causing either the contents of the canister to erupt, burning the
23 user, or exposes the user to still-spinning blades which can cut or lacerate the user,
24 break bones, or cause burns to the user.

25 47. An ordinary consumer would not have expected the NutriBullet
26 blenders to over-pressurize leading to burns and/or lacerations.

27 48. Plaintiff was harmed by the NutriBullet blender when as the Plaintiff
28 began to disengage the canister from the base, the canister broke into two pieces

1 causing the Plaintiff's right hand to go into the powered and still-spinning blades
2 where it mangled her hand and caused severe lacerations nearly severing part of
3 her index finger and breaking bones resulting in severe and permanent injuries.

4 49. The design defect, described above, in the NutriBullet blenders was
5 the direct and proximate cause of Plaintiff's injuries described herein.

6 50. As a direct and proximate cause of the negligence of Defendants,
7 Plaintiff suffered, and will continue to suffer, personal injuries, including but not
8 limited to, medical bills, loss of past and future earnings, pain, disfigurement,
9 scaring, loss of mobility, use and feeling in her hand, severe emotional distress and
10 anxiety, significant functional loss and limitations, general damages and other
11 economic and non-economic damages in an amount to be proven at trial.

12 **FIFTH CLAIM FOR RELIEF**

13 **Breach of Implied Warranty of Merchantability**

14 **(Plaintiff MARY CALLAHAN as to ALL DEFENDANTS and DOES 1-10)**

15 51. Plaintiff incorporates by reference all other paragraphs of this
16 complaint as if fully set forth herein.

17 52. At all relevant times, Defendants and Does 1-10 were in the business
18 of and did design, develop, formulate, manufacture, test, package, promote, label,
19 advertise, market, instruct on, distribute, supply and/or sell products and blenders
20 marketed under the NutriBullet and MagicBullet brand names. These products are
21 intended for use as household blenders.

22 53. Plaintiff is informed and believes Defendants impliedly warranted to
23 Plaintiff that the NutriBullet blenders, including Plaintiff's NutriBullet blender,
24 was of merchantable quality and safe for the use for which it was intended, which
25 is to mix and blend food safely under conditions reasonably foreseeable to be
26 related to its use, including the incident described herein.

27 54. Plaintiff relied on the skill and judgment of Defendants in using the
28 NutriBullet blender, in a manner in which it was reasonably intended to be used

1 and, as a direct and proximate result of the breach of the implied warranties by
2 Defendants, and each of them, Plaintiff sustained the injuries and damages
3 described herein.

4 55. The product was unsafe for its intended use, and it was not of
5 merchantable quality, as warranted by Defendants, in that it had very dangerous
6 propensities when put to its intended use and may cause severe injury to the user
7 during normal use. The NutriBullet was unaccompanied by warning of its
8 dangerous propensities that were either known or reasonably knowable at the time
9 of distribution.

10 56. On or about December 1, 2017, Plaintiff's NutriBullet blender
11 involved in this incident was in substantially the same condition as when it was
12 originally designed, developed, tested, packaged, labeled and sold by Defendants.

13 57. Plaintiff was injured, as described herein, while using the NutriBullet
14 blender in a foreseeable manner for its intended uses.

15 58. As a proximate and legal result of the defective and unreasonably
16 dangerous condition of the NutriBullet blenders, manufactured and supplied by
17 Defendants, Plaintiff suffered severe injuries as described herein.

18 59. That as a direct and proximate cause of the negligence of Defendants,
19 Plaintiff suffered, and will continue to suffer personal injuries, including but not
20 limited to, medical bills, loss of past and future earnings, pain, disfigurement,
21 scarring, loss of mobility, use and feeling in her hand, significant functional loss
22 and impairment, severe emotional distress and anxiety, general damages and other
23 economic and non-economic damages in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF

Violation of the Cal. Bus. & Prof. Code § 17200, *et seq.*

(Plaintiff MARY CALLAHAN as to ALL DEFENDANTS and DOES 1-10)

27 60. Plaintiff incorporates by reference all other paragraphs of this
28 complaint as if fully set forth herein.

1 61. Business & Professions Code, section 17200 prohibits acts of “unfair
2 competition,” including any “unlawful, unfair or fraudulent business act or
3 practice.” Defendants’ conduct, as described above, is unlawful, unfair and
4 fraudulent in violation of the statute.

5 62. Defendants’ acts and practices are unlawful because they violate Civil
6 Code, sections 1572, 1709, 1710, and 1770(a)(5) and/or 1770(a)(7), as well as
7 common law. Defendants’ acts and practices are also unlawful because they
8 violate section 17500 of the Business and Professions Code.

9 63. Defendants violated the UCL when they concealed and/or failed to
10 disclose the known defects in the NutriBullet blenders to members of the public, in
11 violation of the California Consumer Legal Remedies Act (“CLRA”).

12 64. Defendants violated the UCL by failing to disclose a substantially
13 injurious defect to consumers, contrary to “established public policy” of the
14 CLRA.

15 65. Defendants violated the UCL by fraudulently concealing and
16 intentionally failing to disclose to Plaintiff the defective nature of the NutriBullet
17 blenders, in violation of common law.

18 66. Defendants violated the UCL by actively concealing and omitting
19 from its marketing and other communications, material information about the
20 NutriBullet blenders, including the blender used by Plaintiff, in a manner that has
21 deceived and is likely to deceive consumers and the public.

22 67. Defendant violated the UCL by selling NutriBullet blenders that were
23 defective in design and manufacture.

24 68. Defendants violated the UCL by holding the NutriBullet blenders out
25 as safe.

26 69. The financial injury and risk of personal safety to consumers by
27 Defendants’ conduct greatly outweighs any alleged countervailing benefit to
28 consumers of competition under all of the circumstances. The fraudulent conduct

1 described herein was known to, and authorized by Defendants' officers, directors
2 and managing agents.

3 70. The injury to consumers by Defendants' conduct is not an injury that
4 consumers themselves could reasonable have avoided because of Defendants'
5 concealment of material fact.

6 71. To this day, and in addition to failing to disclose the defect,
7 Defendants continue to violate the UCL by continuing to actively conceal the
8 material information regarding the defective nature of the NutriBullet blenders, and
9 by failing to disclose that NutriBullet blenders are both defective and dangerous.

10 72. In addition to failing to disclose the defect, Defendants' advertising
11 campaigns also violated the UCL. Throughout the relevant time period, Defendants
12 engaged in a long-term advertising campaign that was likely to deceive members
13 of the public by failing to disclose the material fact that NutriBullet blenders are
14 defective, and to the contrary, advertised that the product was an integral part of a
15 healthy lifestyle.

16 a. Specifically, Defendants' NutriBullet commercials that are
17 broadcast on television (for example, the advertisement available at
18 <https://www.youtube.com/watch?v=hfWHl8xnxF8>) fail to contain warnings
19 regarding the potential for the NutriBullet blenders to cause severe personal injury,
20 notwithstanding that Defendants are clearly aware of the dangerous propensity of
21 their products, have had advanced knowledge of the unfitness of their product and
22 knowingly disregarded the rights and safety of the public.

23 b. Similarly, Defendants' advertisements through videos publicly
24 available on its Facebook page (<https://www.facebook.com/thenutribullet/>) fail to
25 contain warnings regarding the potential for the NutriBullet blenders to explode
26 and cause severe personal injury.

27 c. Additionally, Defendants' advertisements through videos
28 publicly available on its YouTube page

1 (<https://www.youtube.com/user/thenutribullet/featured>) fail to contain warnings
2 regarding the potential for the NutriBullet blenders to explode and cause severe
3 personal injury.

4 73. As a direct and proximate cause of Defendants' acts, which
5 constituted violations under the unlawful, unfair and fraudulent prongs of the UCL,
6 Plaintiff has suffered injury in fact and lost money. Moreover, Plaintiff faces
7 unsafe conditions as a result of the defective nature of the NutriBullet blenders.
8 Plaintiff has lost money and suffered injuries in fact because, had Defendants
9 disclosed the true defective nature of the NutriBullet blenders, Plaintiff would not
10 have lost money from the purchase of the machine or incurred medical expenses
11 resulting from the injuries suffered while using the blender.

12 74. As a proximate result of Defendants' violation of the UCL,
13 Defendants have been unjustly enriched and should be required to repair the
14 defective NutriBullet blenders and make restitution to Plaintiff.

15 75. Plaintiff demands judgment against Defendants for injunctive relief in
16 the form of restitution, along with injunctive relief in the form of replacement of
17 Plaintiff's NutriBullet blender with units displaying appropriate warnings,
18 attorneys' fees and costs pursuant to, *inter alia*, Code of Civil Procedure, section
19 1021.5.

20 76. Plaintiff also demands judgment against Defendants for injunctive
21 relief requiring distribution to all NutriBullet consumers of warnings regarding the
22 NutriBullet's inherent dangers, attorneys' fees and costs pursuant to, *inter alia*,
23 Code of Civil Procedure, section 1021.5.

24 77. Plaintiff provided notice of its claim to Defendants under CLRA
25 section 1782 subd.(a)

26 78. Defendants have refused to provide the requested relief or restitution
27 pursuant to Plaintiff's claim.

1 **PRAAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against all Defendants, and
3 each of them, for each cause of action, as follows:

4 1. For all special damages including but not limited to, lost wages and
5 future earning capacity, reimbursement of medical and other related bills, future
6 medical bills and the reasonable value of the loss of household services;

7 2. For all general damages including but not limited to, damages for
8 pain, suffering, anguish, discomfort, severe emotional distress, disgust, terror,
9 fright, anger, anxiety, worry, nervousness, shock, anguish and mental suffering,
10 loss of enjoyment of life, loss of ability to engage in normal and customary
11 activities, loss of comfort, society, care and companionship;

12 3. For punitive and exemplary damages in accordance with proof and in
13 an amount consistent with applicable precedent;

14 4. An order requiring Defendants to immediately provide to all
15 NutriBullet blender consumers notice of the inherent dangers of the NutriBullet
16 blenders, and adequate warnings which will prevent future injuries through its
17 advertising;

18 5. Reasonable costs and attorneys' fees;

19 6. Statutory pre-judgment interest;

20 7. For other and further special damages in a sum according to proof at
21 the time of trial;

22 8. For other and further general damages in a sum according to proof at
23 the time of trial; and

24 9. For costs of suit incurred herein; and

25 10. For such other and further relief as the court deems just and proper.

1 Dated: February 7, 2019

ABIR COHEN TREYZON SALO, LLP

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By: /s/ Aaron Lavine,

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Boris Treyzon, Esq.

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Douglas Rochen, Esq.

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Aaron Lavine, Esq.

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Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

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Plaintiff hereby demands a jury trial in the instant action on all stated
claims for relief.

12

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Dated: February 7, 2019

ABIR COHEN TREYZON SALO, LLP

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By: /s/ Aaron Lavine

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Boris Treyzon, Esq.

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Douglas Rochen, Esq.

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Aaron Lavine, Esq.

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Attorneys for Plaintiff

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